IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23643 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DASADA TALUKA PANCHAYAT-THR' ITS TALUKA DEVELOPMENT OFFICER - Petitioner(s)

Versus

DAULATBIBI HAIDERKHANJI MALIK WD/O.HAIDERKHAN SADULLAHKHAN & 1 - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/12/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated

30.1.2002 passed by the learned Lokpal and District Judge, Surendranagar passed in Earth Quake Application No. 2846 of 2001 by which the Lokpal and learned District Judge, Surendranagar has directed the petitioner to pay Earth quake compensation to the respondent for the damage of her residential premises in the earth quake which had taken place on 26.1.2001.

2. It was the case of the respondent that she was having the residential premises at Village Dasada, which came to be damaged or destroyed in earthquake which took place on 26.1.2001 and according to her, she was entitled to compensation for the same as per the policy of the State Government. As the amount of compensation was not paid by the petitioner, the respondent no.1 approached the Lokpal and learned District Judge, Surendranagar by submitting an application being Earthquake Application No. 2896 of 2001. It is required to be noted that pursuant to the order passed by the Division Bench of this court, for each District for the grievances of the earthquake affected persons, the learned District Judge of each

District is appointed as the Ombudsman / Lokpal . The said application was opposed by the petitioner by submitting that at the relevant point of time, when the earthquake took place and the property came to be damaged / demolished, the petitioner was not staying at the said place and she was residing elsewhere and, therefore, as per clarification given by the State government, more particularly, General Administration Department explaining the policy of the State government, compensation is required to be given to only those persons who were in fact, and actually residing in the premises in question and for the residence and for the residential premises which were closed compensation is not required to be paid. The learned Lokpal and District Judge, Surendranagar after appreciating the evidence on record, more particularly, electoral roll of the Gram Panchayat, electoral roll, xerox of the ration card held that in fact, the respondent was residing in the said residential premises and even on earlier occasions also, the application of the respondent No.1 was not rejected by the petitioner on the aforesaid ground and it was rejected on the ground that no objection

from her brother is not produced and that her name is not mentioned in the census register and accordingly, not accepting the objections submitted by the petitioner, the learned Lokpal and the District Judge, Surendranagar by impugned order dated 13.2.2002 allowed the said application by holding that the respondent is entitled to compensation for the damage to his residential premises at Dasada and directed the Taluka Development Officer, Patadi i.e. Petitioner herein to pay the amount of compensation to the respondent No.1 accordingly.

3. It appears from the record that inspite of the fact that the petitioner did not pay the amount of compensation to the respondent No.1, the respondent No.1 has preferred Special Civil Application No.14713 of 2005 directing the petitioner herein to comply with the order passed by the learned Lokpal and the District Judge, Surendranagar and thereafter, the petitioner has preferred the present Special Civil Application challenging the aforesaid order after a period of almost three years.

4. Shri H.S.Munshaw, learned advocate appearing on behalf of the petitioner has vehemently submitted that the order passed by the learned Lokpal and the District Judge, Surendranagar directing to pay compensation to the respondent No.1 is absolutely illegal and contrary to the policy of the State Government with regard to the payment of compensation. He has submitted that as the respondent was not residing in the premises in question and as such, the residential premises was closed and the respondent was residing and staying in other village, the respondent was not entitled to amount of compensation as per the clarification made by the General Administration Department explaining and clarifying the policy of the State Government and therefore, it is requested to allow the present Special Civil Application.

5. To know the exact policy, this Court directed the petitioner to produce the policy of the State Government for payment of compensation to the earthquake affected persons and as per the Item No.3, amount of compensation is not required to be

paid to only those residential buildings which are in fact used for non residential use and in the policy / Government Resolution dated 23.2.2001, nothing is mentioned that if the residential premises is closed and the same is demolished or damaged, the compensation is not required to be paid. However, Shri H.S.Munshaw, learned advocate has relied upon one booklet issued by the General Administration Department explaining and / or clarifying and to solve the disputes with regard to the rehabilitation (housing development) and according to him as per the same, the State Government has clarified and replied and answered to a specific question that if the residential building is closed, whether the landlord is required to be paid compensation or not, and to that, it is answered by the General Administration Department that with regard to those residential buildings which were closed and the same was destroyed / damaged, the Government relief is not required to be paid. As stated hereinabove, as such, under the original Resolution dated 23.2.2001, there is no condition and it is only in the booklet issued by the General Administration Department answering

certain questions, the same has been mentioned. Therefore, it is required to be considered whether the original resolution and/or policy will prevail or the subsequent questionnaires. As such, answer is that only the Resolution and the original policy will prevail and the Court is required to consider the same. Apart from that so far as the present case is concerned, the learned Lokpal and the learned District Judge, Surendranagar who is appointed by the Division Bench of this Court to consider the grievance of the earthquake affected persons by the impugned order on appreciation of evidence considering the ration card and voters' list of village and another votors' list and considering the fact that the earlier twice while rejecting the application of the respondent No.1, no such objection was raised, learned Lokpal and the District Judge has held that it cannot be said that residential plot was closed and / or the respondent No.1 was not residing. This is a finding of fact given by the learned Lokpal and the District Judge on appreciation of evidence which is not perverse and / or arbitrary and the same is not required to be interfered with by this Court

in exercise of the powers under Article-226 of the Constitution of India.

6. Under the circumstances, even on merits, there is no case in favour of the petitioner and as such, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed.

[M.R.Shah, J.]

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